

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAVID ELLIS, Successor Plan)	
Administrator and Successor Plan)	
Trustee for the Rycenga Homes, Inc.)	
Profit-Sharing 401(k) Plan, et al.,)	Case No. 1:04-cv-694
)	Honorable Joseph G. Scoville
and)	
)	
THE HANOVER INSURANCE)	
COMPANY)	
)	
Plaintiffs and,)	
Counter-Defendants,)	
)	
v.)	<u>ORDER FOR INTERPLEADER</u>
)	
EDWARD D. JONES & CO., L.P.,)	
)	
Defendant and)	
Counter-Plaintiff.)	
)	

Plaintiff David Ellis and defendant Edward D. Jones & Co., L.P., the only parties remaining in this action, have filed a stipulation (docket # 150) granting Edward Jones leave to file a counterclaim for interpleader and to add the Hanover Insurance Company as a counter-defendant. Upon review of the motion and the record in this matter, the court finds as follows:

1. This court has subject-matter jurisdiction over this interpleader action pursuant to 28 U.S.C. § 1335, as complete diversity of citizenship exists between counter-defendant David Ellis (as Administrator and Trustee for the Rycenga Homes, Inc. Profit-Sharing Plan), a resident of the State of Michigan, and The Hanover

Insurance Company, a New Hampshire corporation with principal place of business in the State of Massachusetts, and the amount in controversy exceeds the sum of \$500.00.

2. This is an appropriate case for statutory interpleader, as Edward D. Jones & Co., L.P. is exposed to conflicting claims of liability regarding entitlement to the sum of \$360,000.00, which Edward Jones has agreed to pay plaintiff David Ellis, on behalf of the profit-sharing plan, in settlement of all claims raised in this matter. Under the terms of a settlement agreement between The Hanover Insurance Company and the plan, the insurance company has asserted a right of subrogation to any recovery made by David Ellis and/or the plan in connection with this civil action against Edward D. Jones. Consequently, Edward D. Jones is or may be exposed to double liability as a result of the conflicting claims of David Ellis, as trustee of the plan, and The Hanover Insurance Company to all or part of the \$360,000.00 settlement reached in this case.

NOW, THEREFORE, with the court being fully advised in the premises:

IT IS ORDERED that defendant Edward D. Jones & Co., L.P. be and hereby is GRANTED leave to file a counterclaim for interpleader and to add The Hanover Insurance Company as a party counter-defendant, with summons to issue.

IT IS FURTHER ORDERED that David Ellis and The Hanover Insurance Company, within 20 days of service of process on The Hanover Insurance Company, shall file answers setting forth their claims to the settlement reached in this matter and any defenses that they may have to the claims of any other party.

IT IS FURTHER ORDERED that the parties counter-defendant shall assert in this action all claims and defenses that they may have with regard to the \$360,000.00 settlement reached in this matter, and in no other court.

IT IS FURTHER ORDERED that Edward D. Jones & Co., L.P. shall forthwith pay into the registry of this court the sum of \$360,000.00, which shall be held by the Clerk in an interest-bearing account, pending further order of the court.

DONE AND ORDERED this 9th day of May, 2007.

/s/ Joseph G. Scoville
United States Magistrate Judge